(13)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR (C.G.)

CR.A. 652/2002.

(CRIMINAL APPEAL UNDER SECTION 374(2) OF THE CODE OF CRIMINAL PROCEDURE 1973.)

APPELLANTS (IN JAIL) : (1) Ganesh Ram Chouhan S/o Ramayan Chouhan, Aged about 23 years.

(2) Krishan Kumar Chouhan S/o Harnarayan Chouhan, Aged about 26 years.

Both resident of village- Markara, P.S. -Kasdol , Distt.-Raipur (C.G.)

Filed on 20.06.02 by Shri C.K. Sahu Advocate

R. to D.R. (J) 20/06

VERSUS

RESPONDENT : State of Chhattisgarh Through : P.S. Kasdol Distt. Raipur (C.G.)

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HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

(DIVISION BENCH)

CRIMINAL APPEAL NO.652 OF 2002

Ganesh Ram Chouhan & another

- Versus -

State of Chhattisgarh

JUDGMENT FOR CONSIDERATION

Sd/-
L.C.BHADOO
Judge

HON'BLE THE CHIEF JUSTICE

Sd/-
Chief Justice

POST FOR JUDGMENT ON 8th NOVEMBER, 2004

Sd/-
JUDGE
8th.11.2004

(36)

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

(DIVISION BENCH)

CORAM: -

HON'BLE MR. A.S.V. MOORTHY, C.J.

AND HON'BLE MR. L.C. BHADOO, J.

CRIMINAL APPEAL NO.652 OF 2002

Ganesh Ram Chouhan & another

- Versus -

State of Chhattisgarh

Present:

Shri V.C. Ottalwar, Advocate: For the appellants.

Shri Neeraj Mehta, Panel Lawyer: For the State/respondent.

JUDGMENT

(Delivered on 8th. November, 2004)

The following judgment of the Court was delivered by ***Justice L.C. Bhadoo***: -

The accused/appellants have preferred this criminal appeal being aggrieved by the judgment of conviction and sentence dated 9-5-2002 passed by the 2nd Additional Sessions Judge, Baloda Bazar, Raipur in Sessions Trial No.434/2001, whereby learned Additional Sessions Judge after holding the accused/appellants guilty for commission of the offence under Section 302 read with Section 34 of the I.P.C., sentenced each of them to undergo imprisonment for life and to pay a fine of Rs.500/-, in default of payment of fine to further undergo R.I. for 6 months.

(2) Brief facts leading to filing of this criminal appeal are that Bhuri Bai, mother of deceased Sadaram, gave a merg intimation (Ex.-

P/1) to the In-charge, Police Station Kasdol that in the morning of 4-9-2001 her son Sadaram after taking Rs.700/-for purchasing tomato and vegetables, left for Shivri Narayan. But, in the evening, he did not return. Even she enquired from Sitaram about her son. Sitaram disclosed that about 3 pm Sadaram met him in Katgi market and he was selling vegetables. In the morning of 5-9-2001 at about 8 am Alagram Kewat came to her house and informed that one person has informed that a body of the person who was selling vegetables is lying in a pond of village Jhabadi. On receiving this information she left for the pond along with Sunder Chouhan. When she reached the spot, she saw that few persons were standing there and the body of her son was lying there. The cycle and basket of vegetables were also lying there. On receiving this information, a case was registered. PW-16 Paras Ram Yadav took up the investigation. He went to the scene of occurrence, after giving notice to the Panchas he prepared Panchanama (Ex.-9-A) of the body. Thereafter, the dead body of Sadaram was sent for postmortem examination to the Primary Health Centre, Kasdol where Dr. Y.K. Sharma conducted the postmortem on the dead body of Sadaram. Dr. Sharma noticed as many as 6 injuries on the dead body of Sadaram and prepared the postmortem report Ex.-P/19. After postmortem, he reached to the conclusion that cause of death of Sadaram was asphyxia due to drowning within 48 hours and the nature of death was homicidal.

(3) The Investigating Officer took into possession plain soil and the blood stained soil from the place of incident as also cycle, basket and the knife. The accused/appellants during police custody gave information under Section 27 of the Evidence Act and pursuant to that, clothes of the accused persons were recovered at their instance, which were stained with blood. The same were sent for chemical examination

to the Forensic Science Laboratory, Raipur from where the report was received. After completion of the investigation, charge sheet was filed against the accused/appellants for commission of the offence under Section 302 read with Section 34 of the I.P.C. in the Court of Judicial Magistrate, 1st Class, Baloda Bazar who in turn committed the case to the Sessions Judge, Raipur, from where the 2nd Additional Sessions Judge, Baloda Bazar, Raipur received the case on transfer.

(4) Learned Additional Sessions Judge after hearing Public Prosecutor and counsel for the accused and perusal of the records, reached to the conclusion that prima facie offence under Section 302 read with Section 34 of the I.P.C. was made out against each of the accused. Accordingly, he framed the charges against the accused persons and explained to them. They denied the charges and claimed to be tried.

(5) The prosecution in order to prove the offence against the accused/appellants examined in all 16 witnesses. On the other hand, statements of the accused/appellants were recorded under Section 313 of the Cr.P.C. in which each of the accused/appellants denied the prosecution evidence and stated that they are innocent and have been falsely implicated in the crime. However, learned Additional Sessions Judge after hearing arguments of counsel for the accused and Additional Public Prosecutor convicted and sentenced each of the accused as mentioned above.

(6) We have heard Shri V.C. Ottalwar, learned counsel for the accused/appellants and Shri Neeraj Mehta, Panel Lawyer for the State/respondent.

(7) As far as the question of nature of death of Sadaram being homicidal is concerned, learned counsel for the appellants has not disputed this fact. Even otherwise, Dr. Y.K. Sharma (P.W.-15), who conducted the postmortem on the dead body of Sadaram, has categorically stated that on 6-9-2001 he was working as Medical Officer, In-charge, Primary Health Centre, Kasdol and on that day on the request of the Police Station, Kasdol he conducted the postmortem on the body of Sadaram. He noticed as many as 6 external injuries on the body of Sadaram. In his opinion, cause of death was asphyxia due to drowning and the death of Sadaram was homicidal in nature. Therefore, in view of the evidence of Dr. Y.K. Sharma, it stands proved that nature of the death of Sadaram was homicidal.

(8) Now, coming to the involvement of the accused/appellants in committing the murder of Sadaram is concerned, PW-7 Ram Khilawan and PW-8 Rangnath were cited as eyewitnesses to the incident, but both of them have turned hostile during trial. They have not supported the prosecution case. PW-7 Ram Khilawan in the cross-examination by the Additional Public Prosecutor has stated that he has not given statement to the police that he saw the accused persons assaulting Sadaram. In the further cross-examination this witness has stated that near village accused Ganesh Ram and Krishna Kumar met him and said that they have committed murder of Sadaram. But perusal of the police case diary statement Ex.-P/7 shows that this fact that the accused persons made extra judicial confession before him was not disclosed by him in the police case diary statement. Therefore, the statement of this witness that the accused/appellants made extra judicial confession cannot be believed and relied upon. The evidence of this witness does not inspire confidence, nor the prosecution has cited this witness as a witness before

whom the accused persons made extra judicial confession. In para-7 of the statement he has stated that since the police asked him and Rangnath to enquire from the accused persons and in presence of the police the accused persons confessed the crime, therefore, on account of this fact also his evidence is not admissible. Similar is the evidence of PW-8 Rangnath. He has not supported the case of the prosecution that he witnessed the crime and this witness was declared hostile. However, he improved his statement and stated that the accused persons made extra judicial before him. But, in the further cross-examination he has stated that in presence of police the accused persons made extra judicial confession, on this count his evidence cannot be relied upon. Even otherwise, in police case diary statement (Ex.-P/12) this witness simply stated that he along with Ram Khilawan witnessed the incident. He had not made any statement that the accused persons made extra judicial confession before him and Ram Khilawan. Therefore, his evidence to this extent cannot be believed and relied upon in holding the accused/appellants guilty. There is not an iota of evidence or ocular evidence, which proved that the accused/appellants assaulted the deceased and committed his murder.

(9) Now, coming to the circumstantial evidence, the prosecution has tried to connect the accused/appellants based on the recovery of the clothes of the accused/appellants. PW-16 Paras Ram Yadav, Investigating Officer, has stated that each of the accused gave information to him under Section 27 of the Evidence Act. Accused Ganesh Ram gave information (Ex.-P/2) and in pursuance of that he got recovered shirt and full pant from the place of incident. The same were taken into possession under Ex.-P/3. Similarly, accused Krishna Kumar gave information (Ex.-P/4) and in pursuance of that he got recovered his

full pant. Even if the above evidence of the Investigating Officer is believed, even then this evidence does not connect the accused/appellants with the commission of murder of Sadaram because the F.S.L. report shows that on the shirt of each accused blood was found, but there is no report that the same blood was human blood and also same was of the blood group of the deceased, therefore, in the absence of this evidence merely on the basis of recovery of clothes of the accused persons, they cannot be connected with the murder of Sadaram. Therefore, we are of the considered opinion that the prosecution has utterly failed in proving the offence against the accused/appellants for commission of murder of Sadaram. In the circumstances, finding of the trial Court convicting the accused/appellants for murder of Sadaram cannot be sustained for the reasons mentioned above.

(10) In the result, the appeal of the appellants succeeds and the same is allowed. The accused/appellants namely, Ganesh Ram Chouhan and Krishna Kumar Chouhan are acquitted of the charge under Section 302 read with Section 34 of the I.P.C.. They be released forthwith, if not required in any other case.

Sd/-
Chief Justice

Sd/-
L.C.BHADOO
Judge
9th-11-2004

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